

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Mail Stop Appeal Brief - Patents
Commissioner for Patents
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November 13, 2007

APPEAL BRIEF

Dear Sir:

Attached herewith is an Appeal Brief pursuant to 35 U.S.C. §134 and 37 C.F.R. §41.37 for the above-identified patent application in support of a Notice of Appeal filed at the US Patent and Trademark Office on September 12, 2007.

TABLE OF CONTENTS

I.	REAL PARTY IN INTEREST.....	3
II.	RELATED APPEALS AND INTERFERENCES	3
III.	STATUS OF THE CLAIMS	3
IV.	STATUS OF AMENDMENTS.....	3
V.	SUMMARY OF THE CLAIMED SUBJECT MATTER	3
VI.	GROUND OF REJECTION TO BE REVIEWED ON APPEAL	5
VII.	ARGUMENTS	6
VIII.	CLAIM APPENDIX.....	14
IX.	EVIDENCE APPENDIX	20
X.	RELATED PROCEEDINGS APPENDIX.....	21

I. REAL PARTY IN INTEREST

The real party in interest in the above-entitled application is Koninklijke Philips Electronics N.V., Eindhoven, NL.

II. RELATED APPEALS AND INTERFERENCES

The undersigned attorney/agent, the appellants, and the assignee are not aware of any related appeals or interferences that would directly affect, or be directly affected by, or have a bearing on the Board's decision in this pending appeal.

III. STATUS OF THE CLAIMS

Claims 1-31 are rejected and are all on appeal.

IV. STATUS OF AMENDMENTS

No after final amendments have been submitted.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

With respect to independent **claim 1**, a system for extending unattended control capabilities for a video receiver includes a shell and a memory. The shell is configured to execute scripts that control demodulation of broadcast programming. The memory includes at least one script, which includes a sequence of commands for demodulating selected broadcast programming. The at least one script is executable by the shell to select broadcast programming for demodulation from among one or more concurrently airing programs, each matching at least one of a plurality of user-specified descriptive criteria. The at least one script employs associated previously-defined user priorities or conditions to select between conflicting matches or routing options. (See page 7, line 23, page 8, lines 1-3 and 10-17, page 9, lines 5-15, page 11, lines 3-17, page 13, lines 19-24, page 14, lines 6-10, and page 16, lines 4-6).

With respect to **claim 5**, which depends from claim 1, the at least one script, when executed by the shell, controls operation of the video receiver to cause broadcast only of commercials that provide sales information as private data along with broadcast program content. (See page 11, lines 18-24).

With respect to independent **claim 8**, a video receiver includes an input that receives broadcast programming and a scripting system that extends unattended control capabilities for the video receiver. The scripting system includes a shell. The shell includes a script manager that creates executable scripts that control demodulation of broadcast programming. The scripting system further includes a memory. The memory stores scripts created by the shell. The shell further includes a script executor that executes the created executable scripts. The shell executes at least one stored script. The executing script selects broadcast programming for demodulation from among one or more concurrently airing programs, each matching at least one of a plurality of user-specified descriptive criteria. The at least one script employs associated previously-defined user priorities or conditions to select between conflicting matches or routing options. (See page 7, line 11-23, page 8, lines 1-17, page 9, lines 5-15, page 11, lines 3-17, page 13, lines 19-24, page 14, lines 6-10, and page 16, lines 4-6).

With respect to independent **claim 15**, a method for extending unattended control capabilities for a video receiver includes using an interactive program of the video receiver that creates and executes scripts to execute a script that selects a broadcast program to demodulate. The script is executed by the shell to select broadcast programming for demodulation from among one or more concurrently airing programs, each matching at least one of a plurality of user-specified descriptive criteria. The at least one script employs associated previously-defined user priorities or conditions to select between conflicting matches or routing options. (See page 7, line 11-23, page 8, lines 1-5, page 9, lines 5-15, page 17, lines 6-10 and 16-23).

With respect to independent **claim 22**, a datastream, stored on computer readable medium for use with a video receiver, includes one or more computer readable fields for a broadcast programming stream. The one or more fields include selected broadcast

programming and at least one script, which includes a sequence of commands for causing the video receiver to demodulate the selected broadcast programming for display or recording. The at least one script is executable by a shell running within the video receiver. (See the amendment to the specification in the Amendment submitted to the patent office on March, 19, 2007).

With respect to **claim 24**, which depends from claim 1, the shell automatically periodically executes the script to check future programming. (See page 15, 8-16).

VI. GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1, 3, 8, 10, 11, 15-18, 22, 23, 26, and 31 are anticipated under 35 U.S.C. 102(b) by Harrison (US 5,878,222).

Whether claims 2 and 9 are unpatentable under 35 U.S.C. 103(a) over Harrison in view of Goldschmidt Iki et al. (US 6,601,103).

Whether claims 4 and 5 are unpatentable under 35 U.S.C. 103(a) over Harrison in view of Kitsukawa et al. (US 6,282,713).

Whether claims 6, 7, 13, 14, 20, and 21 are unpatentable under 35 U.S.C. 103(a) over Harrison in view of Zigmond et al. (US 6,400,407).

Whether claims 12 and 19 are unpatentable under 35 U.S.C. 103(a) over Harrison in view of Liebenow (US 6,601,074).

Whether claim 23 is unpatentable under 35 U.S.C. 103(a) over Harrison in view of Inaba (US 5,880,789).

Whether claims 24, 25, 28, and 30 are unpatentable under 35 U.S.C. 103(a) over Harrison in view of Williams et al. (US 5,945,988).

Whether claim 27 is unpatentable under 35 U.S.C. 103(a) over Harrison in view of Holtz et al. (US Pub. No. 2002/0053078).

Whether claim 29 is unpatentable under 35 U.S.C. 103(a) over Harrison in view of Lewis (US Pub. No. 2003/0040962).

VII. ARGUMENTS

A. The Rejection of Claims 1, 3, 8, 10, 11, 15-18, 22, 26, and 31 under 35

U.S.C. 102(b)

Claims 1, 3, 8, 10, 11, 15-18, 22, 23, 26, and 31 stand rejected under 35 U.S.C. 102(b) as being anticipated by Harrison. This rejection should be withdrawn because Harrison does not teach each and every element as set forth in the subject claims.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). MPEP §2131.

CLAIM 1

Independent **claim 1** is directed towards a system for extending unattended control capabilities for a video receiver. Claim 1 requires, *inter alia*, a shell and a memory containing at least one script, wherein ***the at least one script is executable by the shell to select broadcast programming for demodulation from among one or more concurrently airing programs each matching at least one of a plurality of user-specified descriptive criteria.***

In the Advisory Action mailed on September 24, 2007, the Office continues to assert that Harrison teaches executing a shell to select broadcast programming for demodulation from among one or more concurrently airing programs, each matching at least one of a plurality of user-specified descriptive criteria. The Advisory Action states that “[s]ince the user sets the channels to be monitored, and the priorities, triggers, and actions associated with the channels, the examiner maintains that Harrison meets the limitation ‘the at least one script is executable by the shell to select broadcast programming for demodulation from among one or more concurrently airing programs each matching at least one of a plurality of user-specified descriptive criteria’ as currently claimed.” However, contrary to the above assertion Harrison does not teach or suggest such claimed aspects.

More particularly, Harrison is directed towards a system that uses a signal processing and selection unit (SPSU) 104 for selecting a television signal to display or record from amongst a plurality of television signals that have already been demodulated. Harrison describes the SPSU 104 in connection with FIG. 2, which is reproduced below.

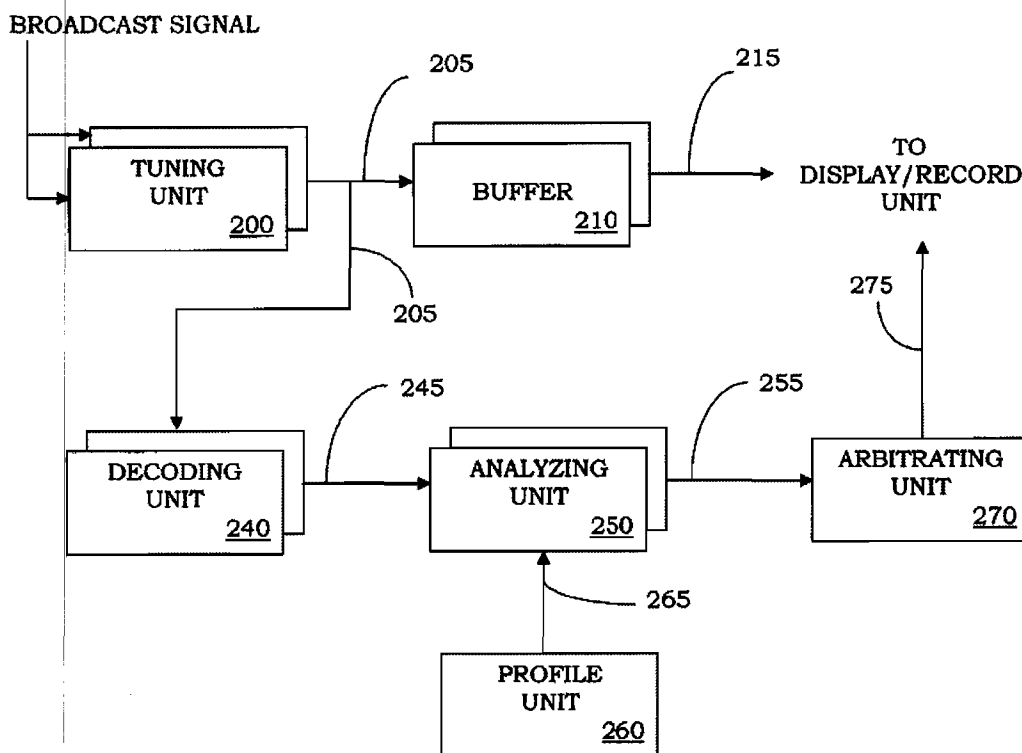


FIG. 2

With reference to FIG. 2 above, Harrison discloses that a plurality of tuners 200 receives and demodulates different broadcast television signals, and that the demodulated television signals are stored in a plurality of buffers 210 for potential subsequent display or recording. Harrison further discloses that the received television signals are also decoded by a plurality of decoding units 240, and that the decoded television signals are analyzed by a plurality of analyzing units 250. Harrison further discloses that the analyzing units 250 analyzes the decoded television signals using a user-defined profile (stored in a profile bank

260) that includes text that identifies program items of interest and text that indicates actions (e.g., display or record) to be performed for each of the items of interest. Harrison further discloses that when a decoded television signal includes content that matches an item of interest, the corresponding stored demodulated television signal is selected and displayed or recorded. Harrison further discloses that that an arbitrating unit 270 resolves display contentions between when more than one of the stored demodulated signals includes content that matches an item of interest.

From the foregoing, it is readably apparent that Harrison teaches using the SPSU 104 to select one of a plurality of already demodulated television signals to display or record. Harrison does not contemplate executing a shell to select broadcast programming for demodulation from among one or more concurrently airing programs, each matching at least one of a plurality of user-specified descriptive criteria, as recited in claim 1.

The Advisory Action further asserts that Harrison teaches the claimed *executable script* in that the user specified text stored in the user profile of Harrison instructs the analyzing unit and the arbitrating unit regarding an action (e.g., display or record) to perform and, thus, the user specified text is used to perform the action in the profile unit. Regardless of whether the user specified text instructs the analyzing and arbitrating units to perform an action (which isn't conceded), the user specified text and the profile is not executable, let alone an executable script. As noted in the reply to the Final Office Action, the user profile is a table that includes a column labeled "Action." Textual indicia such as "Video ON," "Audio ON," "Maximize," and "Record" is stored in this column. This indicia identifies a type of action to be performed; none of this indicia is executable to perform the corresponding action. Instead, Harrison teaches that upon detecting trigger data, the analyzing unit reads the user specified text to determine the action to perform and then the analyzing unit performs the action. Thus, the user specified text of Harrison is not an *executable script* as claimed in claim 1.

With further regard to the claimed shell, the Office states that the shell cannot create

either scripts, text-based sequences of instructions or commands for controlling operation of the video receiver. The Office supports this conclusion by stating that the specification is replete with discussion regarding scripts monitoring channels for key words and descriptive criteria, discloses a script-based method, and discusses a suitable script language. However, the specification expressly states “[i]n the present invention, firmware 101 includes an interactive program (“Shell”) 102 employed to create and run scripts, text-based sequences of instructions or commands for controlling operation of the video receiver 100.” (See Application, page 8, lines 3-5). Thus, the Office’s conclusion is erroneous based on the specification. The noted discussion regarding script monitoring, a script-based method, and a script language provides some non-limiting examples for the invention.

In view of the above, reversal of the rejection of claim 1 is respectfully requested.

CLAIM 8

The foregoing applies, *mutatis mutandis*, to **claim 8**.

CLAIMS 3, 10 AND 11

Claim 3 depends from claim 1 and claims 10 and 11 depend from claim 8. As such, claims 3, 10 and 11 are allowable at least by virtue of their dependencies.

CLAIM 15

Independent **claim 15** is directed towards a method for extending unattended control capabilities for a video receiver. This rejection should be reversed as the reasons discussed above with respect to claim 1 apply, *mutatis mutandis*, to claims 15.

CLAIMS 16-18

Claims 16-18 depend from claim 15 and are allowable at least by virtue of their dependencies.

CLAIM 22

Independent **claim 22** is directed towards a datastream, stored on computer readable medium for use with a video receiver, with one or more computer readable fields for selected broadcast programming and with at least one script that includes a sequence of commands for causing the video receiver to demodulate the selected broadcast programming for display or recording. The reasons discussed above with respect to claim 1 apply, *mutatis mutandis*, to claims 22 and, thus, the rejection of claim 22 should be reversed.

CLAIMS 23, 26 AND 31

Claims 23, 26 and 31 depend from claim 22 and are allowable at least by virtue of their dependencies.

B. The Rejection of Claims 2 and 9 under 35 U.S.C. 103(a)

Claims 2 and 9 are unpatentable under 35 U.S.C. 103(a) over Harrison in view of Goldschmidt Iki et al. **Claims 2 and 9** depend from claims 1 and 8, and by virtue of their dependencies are allowable for at least the reasons discussed above in connection with claims 1 and 8.

C. The Rejection of Claims 4 and 5 under 35 U.S.C. 103(a)

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison in view of Kitsukawa et al. The rejection of these claims should be withdrawn because the combination of Harrison and Kitsukawa et al. does not teach or suggest all the claim limitations, and, thus, the Office has failed to establish a *prima facie* case of

obviousness.

To establish a *prima facie* case of obviousness.... [T]he prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143

CLAIM 5

Claim 5, which depends from claim 1, recites that the at least one script, when executed by the shell, *controls operation of the video receiver to cause broadcast only of commercials that provide sales information as private data along with broadcast program content*. In the Advisory Action, the Office asserts that Kitsukawa et al. teaches the above claimed aspects. However, Kitsukawa et al. does not teach or suggest such claimed aspects. More particularly, Kitsukawa et al. discloses an integrated receiver/decoder (IRD) that provides coupon information along with broadcasts of television programs. A user can select a stored coupon mode that stores the coupon information for presentation at a later time. However, Kitsukawa et al. is silent regarding controlling operation of the IRD so that the IRD selectively broadcasts commercials to broadcasts only commercials that provide sales information as private data along with broadcast program content. Accordingly, the rejection of claim 5 should be reversed.

CLAIM 4

Claim 4 depends from claim 1 and at least by virtue of this dependency is allowable.

D. The Rejection of Claims 6, 7, 13, 14, 20, and 21 under 35 U.S.C. 103(a)

Claims 6, 7, 13, 14, 20, and 21 are unpatentable under 35 U.S.C. 103(a) over Harrison in view of Zigmond et al. **Claims 6, 7, 13, 14, 20, and 21** depend from claims 1, 8, and 15, and by virtue of their dependencies are allowable for at least the reasons discussed above in connection with claims 1, 8 and 15.

E. The Rejection of Claims 12, and 19 under 35 U.S.C. 103(a)

Claims 12 and 19 are unpatentable under 35 U.S.C. 103(a) over Harrison in view of Liebenow. **Claims 12 and 19** respectively depend from claims 11 and 15, and at least by virtue of their dependencies are allowable.

F. The Rejection of Claim 23 under 35 U.S.C. 103(a)

Claim 23 is unpatentable under 35 U.S.C. 103(a) over Harrison in view of Inaba. **Claim 23** depends from claim 1, and by virtue of this dependency is allowable for at least the reasons discussed above in connection with claim 1.

G The Rejection of Claims 24, 25, 28, and 30 under 35 U.S.C. 103(a)

Claims 24, 25, 28, and 30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Harrison in view of Williams et al. **Claims 24, 25, 28 and 30** depend from claims 1 and 15, and by virtue of their dependencies are allowable for at least the reasons discussed above in connection with claims 1 and 15.

H. The Rejection of Claim 27 under 35 U.S.C. 103(a)

Claim 27 is unpatentable under 35 U.S.C. 103(a) over Harrison in view of Holtz et al. **Claim 27** depends from claim 11, and by virtue of this dependency is allowable for at least the reasons discussed above in connection with claim 11.

I. The Rejection of Claim 29 under 35 U.S.C. 103(a)

Claim 29 is unpatentable under 35 U.S.C. 103(a) over Harrison in view of Lewis. **Claim 29** depends from claim 15 and is allowable at least by virtue of this dependency.

CONCLUSION

In view of the foregoing, it is submitted that claims 1-31 distinguish patentably and non-obviously over the prior art of record, and reversal of the rejection of claims 1-31 is respectfully requested.

Respectfully submitted,

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VIII. CLAIM APPENDIX

1. (Original) A system for extending unattended control capabilities for a video receiver comprising:

a shell for executing scripts controlling demodulation of broadcast programming; and

a memory containing at least one script including a sequence of commands for demodulating selected broadcast programming, wherein the at least one script is executable by the shell to select broadcast programming for demodulation from among one or more concurrently airing programs each matching at least one of a plurality of user-specified descriptive criteria, wherein said at least one script employs associated previously-defined user priorities or conditions to select between conflicting matches or routing options.

2. (Previously presented) The system as set forth in Claim 1 wherein the at least one script identifies the one or more concurrently airing programs by searching a program guide received with broadcast programs from an external source, wherein the program guide describes program content of the broadcast programs and is periodically updated via subsequent reception of broadcast programs.

3. (Previously presented) The system as set forth in Claim 1 wherein the shell is an interactive program employed to create and run the at least one script.

4. (Previously presented) The system as set forth in Claim 1 wherein the at least one script, when executed by the shell, controls operation of the video receiver to cause broadcast of commercials for a particular product to be demodulated and transmitted to a recording device.

5. (Previously presented) The system as set forth in Claim 1 wherein the at least one script, when executed by the shell, controls operation of the video receiver to cause broadcast only of commercials that provide sales information as private data along with broadcast program content.

6. (Original) The system as set forth in Claim 1 wherein the at least one script is received

by the video receiver together with a broadcast programming stream including the selected broadcast programming.

7. (Original) The system as set forth in Claim 1 wherein the at least one script is received by the video receiver from an external source separate from a broadcast programming stream including the selected broadcast programming.

8. (Previously presented) A video receiver comprising:

an input that receives broadcast programming; and

a scripting system that extends unattended control capabilities for the video receiver, the scripting system comprising:

a shell, including

a script manager that creates executable scripts that control demodulation of broadcast programming; and

a script executor that executes the created executable scripts; and

a memory that stores scripts created by the shell, wherein the shell executes at least one stored script and wherein the executing script selects broadcast programming for demodulation from among one or more concurrently airing programs each matching at least one of a plurality of user-specified descriptive criteria, wherein said at least one script employs associated previously-defined user priorities or conditions to select between conflicting matches or routing options.

9. (Previously presented) The video receiver as set forth in Claim 8 wherein the at least one script identifies the selected broadcast programming from descriptive criteria in a description of the selected broadcast programming from a program guide that is received along with the broadcast programming and stored in the memory.

10. (Original) The video receiver as set forth in Claim 8 wherein the at least one script, when executed by the shell, controls operation of the video receiver to cause a sequence of

programs broadcast during separate contiguous time periods on different channels to be demodulated and displayed by the video receiver.

11. (Original) The video receiver as set forth in Claim 8 wherein the at least one script, when executed by the shell, controls operation of the video receiver to cause the selected broadcast programming to be demodulated and transmitted to a recording device.

12. (Original) The video receiver as set forth in Claim 11 wherein the at least one script, prior to causing the selected broadcast programming to be demodulated and transmitted to a recording device, checks for previous demodulation and transmission of the selected broadcast programming to the recording device, wherein execution of the at least one script is terminated if the selected broadcast programming was previously demodulated and transmitted to the recording device.

13. (Original) The video receiver as set forth in Claim 8 wherein the at least one script is received by the video receiver via the input together with a broadcast programming stream including the selected broadcast programming.

14. (Original) The video receiver as set forth in Claim 8 wherein the at least one script is received by the video receiver from an external source separate from a broadcast programming stream including the selected broadcast programming.

15. (Previously presented) A method for extending unattended control capabilities for a video receiver comprising:

using an interactive program of the video receiver that creates and executes scripts to execute a script that selects a broadcast program to demodulate, wherein the script is executed by the shell to select broadcast programming for demodulation from among one or more concurrently airing programs each matching at least one of a plurality of user-specified descriptive criteria, wherein said at least one script employs associated previously-defined user priorities or conditions to select between conflicting matches or routing options.

16. (Original) The method as set forth in Claim 15 further comprising:

identifying the selected broadcast programming within the at least one script by one of:

one or more channels on which the selected broadcast programming is to be broadcast and one or more time periods during which the selected broadcast programming is to be broadcast;

a title of the selected broadcast programming; and

keywords describing the selected broadcast programming.

17. (Original) The method as set forth in Claim 15 further comprising:

executing the at least one script utilizing the shell to control operation of the video receiver and cause a sequence of programs broadcast during separate contiguous time periods on different channels to be demodulated and displayed by the video receiver.

18. (Original) The method as set forth in Claim 15 further comprising:

executing the at least one script utilizing the shell to control operation of the video receiver and cause the selected broadcast programming to be demodulated and transmitted to a recording device.

19. (Original) The method as set forth in Claim 18 further comprising:

prior to causing the selected broadcast programming to be demodulated and transmitted to a recording device, checking for previous demodulation and transmission of the selected broadcast programming to the recording device, wherein execution of the at least one script is terminated if the selected broadcast programming was previously demodulated and transmitted to the recording device.

20. (Original) The method as set forth in Claim 15 further comprising:

receiving the at least one script at an input to the video receiver together with a broadcast programming stream including the selected broadcast programming.

21. (Original) The method as set forth in Claim 15 further comprising:

receiving the at least one script at an input to the video receiver from an external source separate from a broadcast programming stream including the selected broadcast programming.

22. (Previously presented) A datastream stored on computer readable medium for use with a video receiver wherein the datastream includes one or more computer readable fields for a broadcast programming stream including selected broadcast programming and at least one script including a sequence of commands for causing the video receiver to demodulate the selected broadcast programming for display or recording, wherein the at least one script is executable by a shell running within the video receiver.

23. (Previously presented) The system as set forth in claim 1, wherein the shell executes the script that is stored in the memory when a user manually initiates execution of the script by selecting a script execute option.

24. (Previously presented) The system as set forth in claim 1, wherein the shell automatically periodically executes the script to check future programming.

25. (Previously presented) The system as set forth in claim 1, wherein the executing script selects the broadcast programming based on an identity of a viewer, wherein the identity of the viewer is a condition to automatically choose content appropriate for the viewer.

26. (Previously presented) The video receiver as set forth in Claim 8, wherein the scripting system further includes a script manager that schedules the script for execution.

27. (Previously presented) The video receiver as set forth in Claim 11, wherein the script includes instructions for selectively skipping commercials while recording the selected broadcast programming.

28. (Previously presented) The video receiver as set forth in claim 1, wherein the script ranks alternative programs for display or recording by automatically extrapolating from a

viewing history of the subscriber's recently viewed programs.

29. (Previously presented) The method as set forth in Claim 15, further including using the executing script for controlling tradeoffs between recording time, picture quality, and available storage space.

30. (Previously presented) The method as set forth in Claim 15, wherein the executing script automatically records a program designated to be displayed instead of displaying the program when the user is concurrently viewing a different program.

31. (Previously presented) The datastream as set forth in claim 22, wherein the shell enters an idle state when a script end time is reached and remains in the idle state until another script is selected for execution.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None known to undersigned attorney/agent.